

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MATTHEW ADAM LEONARD,
Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

ANDREW KRYSZTOPANIEC,

Respondent-Appellant.

UNPUBLISHED

August 26, 2003

No. 243902

Wayne Circuit Court

Family Division

LC No. 95-325159

Before: Donofrio, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). We reverse.

Matthew came into the court's custody just before his first birthday after his mother, Kimberly Leonard, left him at the home of a known drug dealer. Leonard admitted that she had been high on heroin the day she left Matthew, and her parental rights to another child had previously been terminated when she left that child in the care of his heroin-addicted father and the child was found left in a car. At the time of the initial disposition, Leonard was five months pregnant with respondent's child, but she testified that she was willing to leave respondent if the court decided to give custody of Matthew to respondent. Leonard's parental rights to Matthew were terminated at the initial disposition. Although the court did not find sufficient evidence to terminate respondent's parental rights, the court told respondent that Matthew could not be returned to respondent's home as long as respondent was living with Leonard.

Respondent signed a parent-agency agreement that required him to visit Matthew, attend parenting classes, undergo a psychological evaluation and individual therapy, complete drug screens, and maintain suitable income and housing. Leonard was to have no contact with Matthew. On appeal, the parties agree that the focus of the termination trial was on whether respondent had a continuing relationship with Leonard and whether he could protect the child from having further contact with her. The trial court even stated that the only issue it was really concerned with was respondent's relationship with Leonard.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). An appellate court reviews the trial court's decision to terminate respondent's parental rights under the clearly erroneous standard. MCR 5.974(I), now MCR 3.977(j); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is clearly erroneous if, although there is evidence to support it, the appellate court is left with the definite and firm conviction that a mistake has been made. *In re Miller, supra*, 433 Mich 337.

After reviewing the record, we find that the evidence presented at trial was hardly clear and convincing. Foster care worker Dahlia Yono testified that she observed Leonard's clothing in respondent's closet in March 2001 and that she observed Leonard's vehicle parked next to respondent's vehicle at a home visit on August 12, 2001. Yono also relied heavily upon photographs that were taken at Leonard's sister's home that show Leonard and Matthew together. This was the only evidence offered during the FIA's case-in-chief. Respondent explained that the clothing was there because Leonard no longer wanted it, and the car was there because it actually belonged to Leonard's sister, who had come for a visit. Finally, respondent did not deny that Leonard had contact with Matthew on the occasion that the photographs were taken. He explained, however, that the contact was inadvertent. Leonard's mother had asked to see the child and respondent took him to Leonard's sister's home, where he did not expect to see Leonard. There was no evidence presented to the contrary. Respondent testified that he remained for approximately ten minutes and then left, knowing that the child was not to have contact with Leonard.

The trial court wrote that "the maternal relatives established that the father still has a close relationship with the mother. The father allowed the mother to stay with him and see Matthew." There was no such evidence. The FIA failed to present any of the maternal relatives in its case-in-chief and the evidence presented on rebuttal hardly established a close relationship. Leonard's sister, Patricia, testified that respondent had contact with Leonard a couple of weeks prior to the trial date and that he was involved in an altercation with Leonard's friend. She claimed to have taken the photographs on the day that the child came into contact with Leonard, but did not testify regarding whether respondent knew that Leonard would be there. She also did not refute respondent's testimony regarding the brevity of the visit. Leonard's mother's rebuttal testimony also failed to establish a close relationship between respondent and Leonard. She testified that she took the photographs that day. Again, she did not refute the fact that respondent was unaware that Leonard would be there, nor did she refute the fact that respondent left shortly after Leonard's arrival.

Respondent testified regarding his desire to care for Matthew and denied having contact with Leonard aside from his visits with their other child, Andrew, who was born during the pendency of this case. Respondent's therapist, Robert VanEvery, testified that respondent was benefiting from counseling. Respondent was cooperative and receptive to counseling and complied fully with VanEvery. He had made significant progress in recognizing the necessity of taking care of Matthew without Leonard's help. While respondent once had stereotypical opinions about child-rearing, he was understanding the severity of the situation and remained loyal to the child.

Respondent complied with the parent-agency agreement. He had appropriate housing and adequate income, attended parenting classes and counseling, underwent a psychological evaluation and individual counseling, submitted negative drug screens, and regularly visited Matthew. Yono testified that visitation between respondent and Matthew went well. In fact, she indicated that respondent was always appropriate with the child. There was no question that respondent loved Matthew and desired to care for him. Given that there was not clear and convincing evidence that respondent violated any aspect of his parent-agency agreement, including the requirement that respondent allow no contact between Matthew and his mother, the trial court erred in finding that the conditions of adjudication continued to exist or that respondent had failed to provide proper care and custody and could not be expected to do so within a reasonable time. There was not clear and convincing evidence that established these statutory grounds for termination.¹ Therefore, we reverse the trial court's order terminating respondent's parental rights.

Respondent also argues that the trial judge was not impartial, frequently interrupting respondent's counsel and allowing irrelevant evidence to be introduced against him. Respondent did not preserve this claim of judicial bias by objecting during trial or otherwise raising the issue below. *Meagher v Wayne State University*, 222 Mich App 700, 725; 565 NW2d 401 (1997). Further, he has not presented any evidence or identified any specific examples of conduct that would rise to the level of "deep-seated favoritism or antagonism." *Cain v Dep't of Corrections*, 451 Mich 470, 496; 548 NW2d 210 (1996). Therefore, we find this argument without merit.

Reversed.

/s/ Pat M. Donofrio
/s/ Richard A. Bandstra

¹ See, e.g., *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003) (where the respondent fulfilled every requirement of the parent-agency agreement, her compliance negated a finding that MCL 712A.19b(3)(g) had been established).